

original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998), *Order on Reconsideration*, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 C.F.R. § 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

66. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

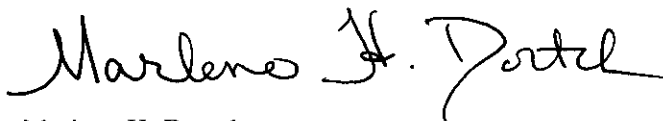
## VI. ORDERING CLAUSES

67. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337, this NOTICE OF PROPOSED RULE MAKING is hereby ADOPTED.

68. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the NOTICE OF PROPOSED RULE MAKING on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

69. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) regarding the possible significant economic impact of the policies and rules proposed in this *Notice of Proposed Rule Making (Notice)* on a substantial number of small entities. Written public comments are requested regarding this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments identified in the *Notice*. The Commission will send a copy of this *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, this *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In the *800 MHz Report and Order* in WT Docket No. 02-55, the Commission reclaimed 700 MHz Guard Bands B Block licenses surrendered by Nextel Communications, Inc., as part of the Commission's 800 MHz re-banding process aimed at improving public safety communications.<sup>4</sup> Although the Commission reclaimed the Nextel licenses in that Order, it deferred the resolution of how best to use the surrendered 700 MHz spectrum. Further, the Commission's required annual Guard Band Manager reports as well as comments from existing licensees indicate that the 700 MHz Guard Bands spectrum is under-utilized.<sup>5</sup> Also, Congress recently created greater certainty regarding the availability of unencumbered 700 MHz spectrum for wireless commercial and public safety licensees—including the Guard Bands—by establishing a "hard date" of February 17, 2009, by which time incumbent analog broadcasters must vacate the spectrum.<sup>6</sup> These factors suggest that the Commission should re-examine its spectrum management policies regarding the 700 MHz Guard Bands. As set forth in detail below, the Commission seeks comment on proposed uses of the reclaimed spectrum, as well as possible revisions to service rules and band plan that would enable the highest and best use of this service.

3. *Band Manager Status.* The Commission seeks comment on proposed revisions to service and technical rules that could promote greater operational, technical and regulatory flexibility for the 700 MHz Guard Bands service generally. For example, the *Notice* seeks comment on the relative merits of the Secondary Markets leasing and band manager leasing mechanisms. The *Notice* seeks comment on

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14969 (2004) ("*800 MHz Report and Order*").

<sup>5</sup> Currently, there are few systems operating in the Guard Bands. The Commission requires all Guard Band Managers, in lieu of any strict performance requirement, to file annual reports by March 1 of each year in their license term through January 1, 2015. As of March 1, 2006, one of the seven Guard Band Managers reported a total of six spectrum user agreements for voice and data applications.

<sup>6</sup> See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DTV Act"). Title III of the DTV Act establishes the DTV transition dates.

whether the Commission should continue to apply the band manager rules for purposes of any re-auction of the former Nextel spectrum, or whether it would be more appropriate to eliminate "band manager only" eligibility restrictions and extend the Commission's current Secondary Markets spectrum leasing policies to this spectrum. The Commission requests comment on whether it should consider making both *regulatory options available to bidders in the event the reclaimed Nextel spectrum is re-auctioned.*

4. The Commission also asks commenters to address whether it remains necessary in the public interest to permit only band managers to be licensed in the 700 MHz Guard Bands, which requires leasing to third parties to guarantee spectrum access through negotiated spectrum use agreements, while prohibiting the band manager from offering service or using the spectrum for its internal purposes. The Commission also seeks comment on an alternative approach involving relaxation of certain band manager restrictions while retaining the overall concept. For example, the *Notice* asks whether the Commission should remove or lessen the restriction on leasing to affiliates. Further, the *Notice* seeks comment on whether the Commission should modify its rules pertaining to incumbent 700 MHz Guard Bands licensees in the event the Commission determines that the band manager concept should not be applied to any re-licensing of the Nextel returned spectrum.

5. *Cellular System Architecture.* In addition to seeking public comment regarding eligibility and use restrictions, the Commission also requests comment on whether it is appropriate to remove or modify certain technical rules that were originally put in place to minimize interference to public safety operations. For example, the *Notice* seeks comment on whether the restriction on cellular architecture in the Guard Bands should be maintained, eliminated or more clearly defined. The Commission seeks comment on whether its ban on the use of cellular architecture in the 700 MHz Guard Bands should be removed or revised in ways that will provide all Guard Bands licensees, including small businesses, with greater operational flexibility yet ensure adequate interference protection to public safety operations. The *Notice* requests comment on a proposal that advocates the removal of the Commission's cellular architecture prohibition in favor of a power flux density (PFD) limit used in conjunction with improved receiver technology. The *Notice* asks whether, in the event that the Commission eliminates the cellular architecture restriction, the Commission should implement a PFD limit as a means to mitigate interference to public safety operations. Alternatively, the Commission also seeks comment on whether it should reduce the 1 kilowatt maximum Effective Radiated Power (ERP) limit for those 700 MHz Guard Band base stations implemented in a cellular architecture, either applied independently or in conjunction with a PFD limit as a means of mitigating interference to public safety operations. Further, in order to determine the possible impact of removing or modifying the cellular architecture ban on all affected parties (Guard Bands licensees as well as public safety entities), the Commission seeks comment on the feasibility of completing the required coordination with public safety operations of the numerous sites involved in a cellular architecture.

6. *Emission Limits.* The *Notice* also requests comment on whether the Commission should reconsider the existing out-of-band emission (OOBE) limits used for the 700 MHz Guard Bands. Specifically, the Commission seeks comment on whether it should replace its current use of Adjacent Channel Power (ACP) limits with the OOBE limits that apply to the Upper 700 MHz C and D Blocks.<sup>7</sup> The Commission also asks commenters to provide comment on the emission limits necessary to protect

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<sup>7</sup> Licensees operating in the C and D Blocks of the Upper 700 MHz Band must provide out-of-band emission (OOBE) protection to services outside each licensee's assigned spectrum by, at a minimum, attenuating power below the transmitter power (P) by at least  $43 + 10 \log P$  dB for any emission on all frequencies outside the licensee's authorized spectrum. 47 C.F.R. § 27.53(c)(1) and (2). ACP limits differ from OOBE limits in that they require several different power attenuation levels at specific points displaced from the center frequency of a channel. OOBE limits, on the other hand, require that out-of-band signal power be attenuated to ensure that the maximum out-of-band signal power maintains an established, constant relation to the transmitter power.

public safety operations in the event broadband operations are permitted in the public safety block.<sup>8</sup> Further, in the event that the Commission maintains the current ACP limits and does not apply OOB limits to the Guard Bands, the *Notice* asks whether the Commission's rules should be modified to account for operations wider than 150 kilohertz, and requests that commenters propose attenuation values for band widths greater than 150 kilohertz that will maintain adequate protection for public safety operations.

7. *Band Plan Proposals.* The *Notice* requests comment on whether the Commission should re-examine the current 700 MHz Guard Bands spectrum plan. The Commission requests comment on a proposal submitted by Motorola, Inc. and the United Telecommunications Council (Motorola/UTC). The Motorola/UTC proposal states that the nation's critical infrastructure industries (CII) require wireless communications that are reliable, ubiquitous in coverage, and interoperable with public safety entities during emergencies, particularly where CII entities are among first responders to a disaster or emergency. The Motorola/UTC plan proposes that the Commission reallocate one megahertz of the Guard Bands B Block for critical infrastructure interoperability and retain the remainder of the B Block as a guard band. The Commission also seeks comment on alternative proposals that ask that the Commission reallocate the 700 MHz Guard Bands and public safety spectrum in order to accommodate broadband operations by Guard Bands licensees as well as public safety entities.<sup>9</sup> Because each of the proposals would require the Commission to reclaim the B Block spectrum, the *Notice* requests comment on how best to clear the block of existing licensees in the event that the Commission concludes that it is in the public interest to reconfigure the band plan. The *Notice* tentatively concludes, however, that it would not be appropriate to adopt any proposal that entails a shift in the narrowband channels within the public safety band unless two issues—the costs of reprogramming existing public safety radios, and international border coordination—are resolved expeditiously. The *Notice* also tentatively concludes that any decision to shift the existing Upper 700 MHz band plan in a way that affects “recovered analog spectrum” within the DTV transition would need to be made in time to allow the Commission to conduct the auction of recovered spectrum in accordance with the relevant statutory requirements.

## B. Legal Basis

8. The authority for the action proposed in this rulemaking is contained in Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337.

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<sup>8</sup> Emission limits for the Guard Bands were based on the 700 MHz public safety block channelization scheme, which assumes narrowband and wideband, rather than broadband, communications. The Commission recently sought comment on the possibility of reconfiguring the 700 MHz public safety band plan to facilitate broadband operation. See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Eighth Notice of Proposed Rulemaking*, WT Docket Nos. 96-86 and 05-157, 21 FCC Rcd 3668 (2006).

<sup>9</sup> A consortium consisting of Access Spectrum, L.L.C., Pegasus Guard Band, L.L.C., Columbia Capital Equity Partners III, L.P. and PTPMS II Communications, L.L.C., submitted an August 3, 2005 White Paper and a November 4, 2005 Supplemental White Paper, proposing three alternative Upper 700 MHz band plans. Another proposal (the “Optimization Plan”) was subsequently filed by Access Spectrum, L.L.C., Pegasus Guard Band, L.L.C., Columbia Capital, and Intel Corporation on June 6, 2006.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>10</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>11</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>12</sup> A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).<sup>13</sup>

10. *700 MHz Guard Band Licensees.* The term “small business” in the context of Cellular and Other Wireless Telecommunications Companies is defined as companies employing no more than 1,500 persons.<sup>14</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of the bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

11. *Governmental Entities.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.<sup>16</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

12. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical

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<sup>10</sup> 5 U.S.C. § 603(b)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>13</sup> 15 U.S.C. § 632.

<sup>14</sup> The Commission does not have information as to the number of current 700 MHz Guard Bands licensees that fall under the SBA definition of “small business” (*i.e.* those with less than 1,500 employees). NAICS code 517212.

<sup>15</sup> 5 U.S.C. § 601(5).

<sup>16</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299-300, Tables 490 and 492.

services.<sup>17</sup> The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in wireless communications employing no more than 1,500 persons.<sup>18</sup> According to Census Bureau data for 2002, in this category there was a total of 8,863 firms that operated for the entire year.<sup>19</sup> Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees.<sup>20</sup> With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

13. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees.<sup>21</sup> Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments<sup>22</sup> in this category.<sup>23</sup> Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999.<sup>24</sup> The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.<sup>25</sup>

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<sup>17</sup> See subparts A and B of Part 90 of the Commission's Rules, 47 C.F.R. §§ 90.1-90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

<sup>18</sup> See 13 C.F.R. § 121.201 (NAICS code 517212); U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Employment Size of Establishments for the United States: 2002," Table 2, NAICS code 517212.

<sup>19</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Employment Size of Establishments for the United States: 2002," Table 2, NAICS code 517212.

<sup>20</sup> *Id.*

<sup>21</sup> 13 C.F.R. § 121.201, NAICS code 334220.

<sup>22</sup> The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the number given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census break-out data for firms or companies only gives the total number of such entities for 1997, which were 1,089.

<sup>23</sup> U.S. Census Bureau, 1997 *Economic Census*, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220.

<sup>24</sup> Census Bureau information for 2002 indicates that there were 1,041 establishments in this category. See U.S. Census Bureau, 2002 *Economic Census*, Subject Series: Manufacturing, "Industry Statistics for Industry Groups (continued....)"

#### **D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements**

14. This *Notice* seeks comment on possible revisions to the 700 MHz Guard Bands service rules that may modify reporting, recordkeeping and other compliance requirements. The Commission requests comment on proposals to apply its Secondary Markets leasing regime to reclaimed 700 MHz Guard Bands spectrum as well as to existing licensees. Application of Secondary Markets leasing to the 700 MHz Guard Bands would require a modification of current reporting and recordkeeping requirements. Further, as noted, the *Notice* seeks comment on whether to eliminate its prohibition on cellular architecture in the 700 MHz Guard Bands. In light of the numerous sites that are involved in a cellular architecture, this proposal could lead to more intensive coordination with public safety operations if the ban is lifted.

#### **E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>26</sup>

16. Generally, the Commission's primary objective in issuing the *Notice* is to determine the most efficient and effective use of the reclaimed Nextel spectrum and the 700 MHz Guard Bands. The Commission invites comment on ways in which the Commission can achieve its goal of encouraging operational, technical and regulatory flexibility for all licensees, including small entities, while at the same time imposing minimal burdens on small entities. The Commission seeks comment on the effect the various proposals described in the *Notice* will have on small entities, whether existing or prospective Guard Bands licensees, or public safety entities. To assist the Commission in its analysis, commenters are asked to provide information regarding which entities would be affected by possible revisions to 700 MHz Guard Band service and technical rules as well as to the 700 MHz Guard Bands spectrum band plan as described in this *Notice*. In particular, the Commission seeks estimates of how many small entities might be affected and whether the proposals under consideration would be overly burdensome to small entities. The following summarizes significant alternatives considered in the *Notice*.

17. *Band Manager Status.* Under the current rules, the Guard Band Manager must lease to third parties to guarantee spectrum access through negotiated spectrum use agreements, while the Guard Band Manager cannot itself offer service or use the spectrum for its internal purposes. Additionally, the Guard Band Manager cannot lease its spectrum to more than 49.9 percent of its affiliates in the licensed geographic area. These restrictions were created to promote the leasing of spectrum to third parties, many of whom would be small entities that lack the capacity or need to acquire an entire service area. The *Notice* seeks comment on the relative merits of the Secondary Markets leasing and band manager leasing policies. Noting that certain Guard Bands licensees argue that the current band manager rules have

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and Industries: 2002," Table 2, (issued October 2005) NAICS code 334220. However, the 2002 Census data does not specify employment size information for establishments in this category.

<sup>25</sup> We note, however that major providers of 700 MHz equipment, Motorola and M/A-COM Private Radio Systems, Inc., are not considered small businesses.

<sup>26</sup> See 5 U.S.C. § 603(c).

resulted in the inefficient use of the spectrum, the *Notice* asks whether the Commission should retain the existing Guard Band Manager rules or whether the Commission should apply a different regulatory structure, such as the Secondary Market rules, to the Guard Bands spectrum generally. Alternatively, the *Notice* asks whether the Commission should continue to apply the band manager rules for purposes of any re-auction of the former Nextel spectrum, or even if existing rules are retained for existing licensees. The *Notice* also asks whether it should permit existing or new licensees to choose among several regulatory options for managing the Guard Bands.

18. The *Notice* also seeks comment on an alternative approach involving the relaxation of certain band manager eligibility restrictions, while retaining the overall existing band manager concept. For example, the *Notice* ask whether the Commission should remove or lessen the restriction that band managers may not lease more than 49.9 percent of their spectrum in a geographic area to affiliates. Alternatively, the Commission asks whether it should change its rules to permit a band manager to use its licensed spectrum in some capacity exclusively for internal purposes.

19. *Cellular System Architecture.* The *Notice* seeks comment on whether the restriction on cellular architecture in the Guard Bands should be removed or modified in order to facilitate the use of broadband technology by all Guard Bands licensees, including those qualifying as small businesses. The Commission seeks comment on a proposal to lift the cellular architecture prohibition and replace it with a power flux density (PFD) limit as an alternative means to ensure adequate interference protection to public safety operations. The *Notice* also seeks comment on another option, applied either independently or in conjunction with a PFD limit, to reduce the 1 kilowatt maximum ERP limit for Guard Bands base stations implemented in a cellular architecture. Noting that reducing ERP limits could minimize the area of interference surrounding each base station, thereby reducing the overall potential for interference to adjacent channel public safety mobiles/portables, the Commission seeks comment as to what base station ERP limit applied to a Guard Bands system based on a cellular architecture would adequately protect public safety systems.

20. *Emission Limits.* The *Notice* also requests comment on whether the Commission should reconsider the existing OOB limits used for the 700 MHz Guard Bands. The Commission originally applied the current ACP limits to the Guard Bands because it found that the immediate proximity of the Guard Bands to the public safety block justifies an application of the same emission limit for the Guard Bands as applies for emissions from within the public safety block. In the *Notice*, the Commission seeks comment on the proposal to replace its current use of ACP limits with OOB limits.<sup>27</sup> The Commission also seeks comment on the emission limits necessary to protect public safety operations in the event broadband operations are permitted in the public safety block. Alternatively, to the extent that the Commission determines that the use of ACP limits does not sufficiently guard public safety entities against unwanted OOB, the *Notice* asks whether the Commission's rules should be modified to account for operations wider than 150 kilohertz, and requests that commenters provide attenuation values for bandwidths greater than 150 kilohertz that will maintain adequate protection for public safety operations. Finally, the *Notice* also considers the relative merits of maintaining the status quo.

21. *Band Plan Proposals.* The *Notice* requests comment on whether the Commission should re-examine the current 700 MHz Guard Bands spectrum plan, and asks commenters to consider several alternative band plan proposals. First, Motorola/UTC requests that the Commission reallocate the licenses surrendered by Nextel from the Guard Bands B Block as narrowband channels for critical infrastructure industries in support of interoperability with public safety entities. Motorola/UTC argue that one megahertz of the B Block contiguous with the public safety block could carry narrowband channels dedicated to providing critical infrastructure entities with the ability to communicate with state

<sup>27</sup> See *supra* notes 7 and 8.

and local agencies. The *Notice* seeks comment on the potential benefit of creating a separate class of interoperability channels, and whether the proposal should be applied only to the former Nextel spectrum or to all Guard Bands licenses.

22. The *Notice* also seeks comment on a proposal requesting that the Commission rededicate the relinquished Nextel spectrum for exclusive public safety use. The *Notice* seeks comment on whether there have been any technical or marketplace developments that may alleviate concerns that redesignating the spectrum for public safety applications may result in increased interference to public safety.

23. Alternatively, the Commission also seeks comment on various proposals from existing Guard Band Managers to revise the Upper 700 MHz band plan. A consortium consisting of almost all existing Guard Band Managers filed a White Paper proposing three alternative Upper 700 MHz band plans with the goal of facilitating broadband communications inside the Guard Bands. Subsequently, a new consortium, which includes most of the White Paper proponents, filed the Optimization Plan, advocating another, more comprehensive band plan proposal that implicates the Guard Bands as well as the Upper 700 MHz public safety block.

24. The Optimization Plan proposes, in part, that three megahertz from the existing B Block should be allocated to the public safety block as additional spectrum for broadband communications, and that the remaining Guard Bands spectrum should be consolidated into a new A Block. The *Notice* seeks comment on whether the public interest (including the interests of small entities) would be served by adoption of the band plan proposed in the Optimization Plan, and asks for comment on a number of "transition" issues, including timing and cost considerations associated with a band plan shift, how existing B Block licenses could be reclaimed by the Commission, as well as how a reconfigured and enlarged A Block should be licensed, in the event the Commission adopts the Optimization Plan.

25. Further, because the Optimization Plan does not specifically disclaim or supercede the preceding White Paper band plan proposals, the Commission seeks comment on the White Paper proposals as well. As in the case of the Optimization Plan, the White Paper's three proposals entail some shift in the position of the commercial spectrum blocks in the Upper 700 MHz Band. The White Paper's three band plan proposals would increase the existing allocation of one megahertz for the A Block up to one-and-a-half or two megahertz. In order to facilitate broadband within an enlarged A Block, the White Paper proposals involve either eliminating the B Block while adding bandwidth to the A Block and the public safety block, or reducing the B Block while adding bandwidth to the A Block. The *Notice* seeks comment on whether the Commission should adopt any of the various White Paper proposals and also requests comment on the same transition issues raised by consideration of the Optimization Plan.<sup>28</sup>

#### **F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule**

26. None.

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<sup>28</sup> The *Notice* seeks comment on similar transition issues, including cost, timing and equitable compensation considerations, for each of the other alternative proposals as well.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

Re: *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010* (Notice of Proposed Rule Making, WT Docket Nos. 06-169, 96-86)

We seek comment in this item on potential changes to our rules governing the 700 MHz guard bands, including proposals that would alter the upper 700 MHz band plan. These proposals promise to increase the amount of spectrum available for public safety and facilitate more efficient use of both public safety and commercial spectrum in the band. I am pleased that we are seizing this opportunity to simultaneously consider allowing more flexible operations for existing services while ensuring that public safety users have access to adequate spectrum. As we move forward in this proceeding, however, we must not overlook the digital television transition and our statutory mandate to soon commence an auction of 700 MHz spectrum. I am hopeful that these challenges can be addressed expeditiously and this spectrum put to use as efficiently and effectively as possible.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (Notice of Proposed Rule Making, WT Docket Nos. 06-169, 96-86)*

I am pleased that we seek comment on proposals for the 700 MHz guard bands that could benefit public safety entities or critical infrastructure industries. To be sure, these proposals raise complicated technical questions. We need to make absolutely sure that we do not approve any changes that would reduce the overall efficacy of the guard bands, impose radio reprogramming costs on public safety entities without a plan for reimbursement, or jeopardize our ability to commence the 700 MHz auction before our January 2008 statutory deadline. But because the payoff in terms of public safety and spectral efficiency could be significant, I think it is important that we develop a full record on this issue and provide a timely decision.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (Notice of Proposed Rule Making, WT Docket Nos. 06-169, 96-86)*

I fully support this Notice, as I have regularly commented how exceedingly important it is that we do what we can to keep the Commission on the leading edge of spectrum-based technology and policy. Our inquiry is particularly appropriate and timely in light of recent legislation dealing with the digital television (DTV) transition and the return to the Commission of 700 MHz Guard Band licenses formerly held by Nextel. We have a unique opportunity to take a "fresh look" at the 700 MHz Guard Band service and to review the several interesting band plan proposals advocated by existing Guard Band Managers and critical infrastructure entities.

Earlier this year, the Commission adopted an Eighth Notice of Proposed Rule Making to consider changes to the 700 MHz public safety band to accommodate broadband communication. Just this past month, we launched an important proceeding on possible changes to the rules governing commercial wireless licenses in the 700 MHz Band. With our item today, we've completed a triple play of 700 MHz spectrum policy by putting out three important decisions in rapid succession that will frame the discussion for future use of the 700 MHz Band. As we develop the record for these proceedings, I look forward to the debate to ensure that the entire 700 MHz Band is put to use as quickly and efficiently as possible, and that parts of the spectrum band do not become an untapped well for the thirsty.